IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 1ST FEBRUARY 2007 / 12TH MAGHA 1928

Crl.MC.No. 3952 of 2006()

AGAINST THE ORDER DATED 15/11/2006 IN CMP 5337/2006 IN CC.657/2003 of JUDL.MAGISTRATE OF FIRST CLASS COURT-V, TRIVANDRUM

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PETITIONER:

ANIL KUMAR.S.I., AGED 41,
S/O.SAHADEVAN, KOCHUMALIECKAL, VIKAS NAGAR,
SREEKARIYAM P.O., THIRUVANANTHAPURAM-17.

BY ADV. SRI.S.V.RAJAN
SRI.S.ARUN RAJ

RESPONDENTS: COMPLAINANT & STATE

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1. ARAVIND.D., "BHADRA DEEPAM",
KALLAMPALLY, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM-695 011.

2. STATE OF KERALA, REPRESENTED BY
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM, COCHI.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB
SRI.N.J.JOHNSON

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 01/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.3952 of 2006

Dated this the 1st day of February 2007

O R D E R

The petitioner is the accused in a prosecution under Section 138 of the Negotiable Instruments Act. The cheque is for an amount of Rs.1,30,000/-. The signature in the cheque is not disputed. Notice of demand evoked a response in which it was asserted that "the said cheque had reached the complainant's hands as a security in a transaction involving some third parties also".

2. In the course of the trial, an attempt was made to rely on a receipt allegedly issued by the complainant. The same was produced and marked as Ext.D2. That document was denied by the complainant. The complainant volunteered and applied to get Ext.D2 examined by the expert. The expert submitted Annexure III report in which he rendered the opinion that the signature in Ext.D2 is not that of the complainant. That report of the expert is admissible under Section 293 Cr.P.C. That document was marked. At that stage, the petitioner claimed an opportunity under Section 293(2) Cr.P.C to examine the expert.

The learned Magistrate, by the impugned order (copy of which is produced as Annexure V) turned down the said request. The petitioner has come to this court to challenge Annexure V order.

3. What is the ground? The learned counsel for the petitioner submits that if the handwriting expert were examined under Section 293(2) Cr.P.C, that would have helped the accused to establish his defence. Acceptance of the report without cross-examination would result in great hardship and prejudice to the petitioner, it is submitted. The learned counsel for the respondent/complainant submits that the complainant has no objection in the witness being recalled but the court may kindly note that this is nothing but transparent attempt to protract and delay the proceedings. The learned counsel points out that the specific plea regarding Ext.D2 was not raised at all in the reply notice. Even then to ensure that nothing is left to chance, it was the complainant who took initiative to get the document examined by the expert. There is absolutely no justification for the prayer to recall the expert as a witness under Section 293(2) Cr.P.C for examination.

4. The learned counsel for the petitioner submits that such examination is absolutely necessary and it will be possible for the petitioner to establish by such cross-examination that the opinion of the expert does not deserve to be accepted.

5. Having considered all the relevant inputs, I am satisfied that opportunity can be granted to the petitioner under Section 293(2) Cr.P.C to examine the expert subject to appropriate conditions.

6. In the result, this Criminal Miscellaneous Case is allowed. Annexure V order is set aside. The handwriting expert shall be summoned by the court on the following terms and conditions.

(i) The petitioner shall, within a period of ten days from this date, take all necessary steps to summon the said expert.

ii) If the accused is found guilty and convicted by the court, the learned Magistrate shall ensure that the complainant is adequately compensated with a direction to pay such amount that is found due along with the interest at the rate of 8% per annum from the date of the cheque to the date of payment.

Iii) The learned Magistrate shall make every endeavour to dispose of the case as expeditiously as possible, at any rate, within a period of two months from the date on which a copy of this order is placed before the learned Magistrate.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006